

BEFORE THE
FEDERAL MARITIME COMMISSION

PETRA PET, INC. (a/k/a PETRAPPORT)

Complainant,

v.

PANDA LOGISTICS LIMITED; PANDA LOGISTICS
CO., LTD. (f/k/a PANDA INT'L TRANSPORTATION
CO., LTD.); and RDM SOLUTIONS, INC.

Respondents.

Docket No. 11-14

RESPONDENTS AND CROSS COMPLAINANTS

**PANDA LOGISTICS LIMITED AND PANDA LOGISTICS CO. LTD.'S (f/k/a PANDA
INT'L TRANSPORTATION CO., LTD.) REVISED RESPONSE AND OPPOSITION TO
COMPLAINANT PETRA PET, INC.'S PROPOSED FINDINGS OF FACT**

Panda Logistics Limited and Panda Logistics Co. Ltd. (collectively "Panda") hereby file
their Revised Response and Opposition to Petra Pet Inc.'s ("Petra's") Proposed Findings of Fact.

Initially, Panda objects to the Table of Contents in Petra's Appendix which purports to
summarize or paraphrase the documents in the Appendix on the grounds that it does not
constitute admissible evidence and therefore should be stricken. Similarly Petra's Appendix 19,
contains a page entitled Exhibit 1, which refers to Bills of Lading nominating RDM as US.
Collection agent. Again, there is no factual or evidentiary basis for such an assertion and
accordingly, it should be stricken.

1. As demonstrated by the representative shipping documents Petra Pet is in the
business of purchasing pet treats from vendors in China and importing those goods into the
United States. Documents provided by Complainant: PETRA-04198-04210; 02607-02612;
08052-08061.

**Response: Panda admits that Petra is in the business of importing dog treats from
China.**

2. RDM Solutions, Inc. ("RDM") is owned by Mario Ruiz. Document provided by Respondent: PANDA000057.

Response: Panda admits that Mr. Ruiz has represented that he is the owner of RDM but has no independent basis to confirm that fact.

3. Mario Ruiz has provided international freight and logistics services to Petra Pet, Inc. a/k/a Petrapport ("Petra Pet" or "Petrapport") since at least 2003. Document provided by Respondent: PANDA000017, February 28, 2003, 10:06 AM.

Response: Admit.

4. On or about September 2005 Mario Ruiz left his employer at that time, Amber Worldwide, to run a new logistics company he formed, Worldport Logistics ("Worldport"). Document provided by Respondent: PANDA000018, August 30, 2005, 11:44 AM.

Response: Admit.

5. Since at least 2003 Mario Ruiz sought to use the services of a company in the Panda Logistics Group to provide logistics services to Petra Pet. Respondent's response to Complainant's Interrogatory No. 10.

Response: Admit.

6. Panda Logistics Limited (FMC Org. No. 017098) and Panda Logistics Co., Ltd. (FMC Org. No. 020182) (collectively "Panda Global") are each a Non-Vessel Ocean Common Carrier ("NVOCC") and a non-U.S.-based Ocean Transportation Intermediary ("OTI") within the meaning of 46 U.S.C. § 40102(16)(19). Respondent's Verified Answer and Affirmative Defenses to Complaint, pp. 1-2.

Response: Admit.

7. Since at least 2003 Mario Ruiz working with Betty Sun in Panda Global cooperated to provide freight services to Petrapport. See Tab 3 herein, Document provided by Respondent: PANDA000017, February 28, 2003.

Response: Panda objects to the Proposed Finding of Fact No. 7 on the grounds that it is ambiguous. Panda does not know what Petra means in stating that Panda and Mr. Ruiz "cooperated" to provide freight services to Petra. Panda admits that acting as an NVOCC it quoted rates to RDM which then arranged for transportation services on behalf of Petra, acting as Petra's agent. See Sun Dec. at ¶¶ 4, 6, 11, Panda Appendix 1, pp. 1 - 2.

8. Shortly before Mario Ruiz left Amber Worldwide in September 2005, Betty Sun became aware that Mario Ruiz had formed his new company and asked Mr. Ruiz "What services can WORLDPORT LOGISTICS offer? Maybe you can send me a profile?" Document provided by Respondent: PANDA000018.

Response: Admit.

9. In response, Mario Ruiz advised Betty Sun that "Worldport will be able to provide you with all of the services expected from (sic) a Freight forwarder and partner in the U.S. *** Trucking all over the U.S. and count with agent offices in the U.S. and all over the world. Your company being one of them." See Tab 8 herein, Document provided by Respondent: PANDA000018, August 30, 2005, 11:44 AM.

Response: Admit.

10. In 2006, Worldport (Mario Ruiz) fell behind on a number of freight payments and was not able to obtain bills of lading causing Mr. Ruiz to email Betty Sun stating "As I mentioned on my last payment I will get up to date by the end of the month. *** I will keep paying you also the week after. I can not really understand why you are delaying house bills to them." Petra Pet was not copied on this correspondence. Document provided by Respondent: Panda000083, August 22, 2006.

Response: Panda admits that Proposed Finding of Fact 10 accurately states the email exchange between Mr. Ruiz and Betty Sun. Panda further states that it was instructed to bill RDM for services provided on behalf of Petra. See Sun Dec. at ¶ 16, p. 2.

11. In 2007 Mario Ruiz opened RDM Solutions in order to comply with Federal Maritime Commission ("FMC") requirements as a FMC licensed NVOCC. Document provided by Respondent: Panda000057.

Response: Panda admits that it received the email attached at Appendix 11. Panda does not know the accuracy of the statements made therein by Mr. Ruiz and therefore denies them on the grounds that they constitute inadmissible hearsay.

12. Other than Petra Pet's relationship with RDM Solutions acting as an NVOCC providing international freight and logistics services to Petra Pet, Petra Pet has no business relationship with RDM Solutions. Documents provided by Complainant: PETRA-07199-07200, Email from Dean Triandafellos, January 22, 2011, 12:21 AM.

Response: Panda denies Proposed Statement of Fact 12 on the grounds that it is based upon inadmissible hearsay and lacks any independent indicia of reliability. Panda

further denies that RDM ever acted as an NVOCC on behalf of Petra and submits that no evidence has been presented establishing that RDM issued bills of lading or took any other action consistent with having acted as an NVOCC on behalf of Petra. *See Sun Dec. at ¶¶ 22, 23, p. 3.*

13. RDM Solutions charged Petra Pet for ocean freight by billing Petra Pet's customs broker, Keuhne + Nagel Inc. ("Kuehne + Nagel"). Complainant has supplied numerous arrival notices confirming that RDM Solutions billed Kuehne + Nagel for ocean freight. See representative arrival notices and corresponding Panda Global bills of lading PETRA-04206-04207; 02609-02610.

Response: Panda admits that the Panda bills of lading in Appendix 13 are authentic. Panda further admits that it was instructed to bill RDM for transportation services Panda provided to Petra. Panda lacks any independent knowledge in regard to RDM billing Kuehne + Nagel and therefore denies same. Panda further notes that the arrival notices constitute inadmissible hearsay.

14. In 2008 Mario Ruiz advised a number of companies, including Panda Global through an email to Betty Sun, that Mario Ruiz should be contacted through his RDM Solutions email account (m.ruiz@rdmsolution.com). Document provided by Respondent: PANDA000015.

Response: Admit.

15. In response to RDM Solutions' inquiry on March 6, 2008 asking whether RDM Solutions "would be able to coload with you" on shipments for Petra Pet, Panda Global stated to RDM Solutions that Panda Global required a handling fee of US \$ 80/container "if you coload our contract rates with Hanjin." Documents provided by Respondent: PANDA000028-000029, Emails of March 6, 2008, 6:58 AM and March 6, 2008, 2:49 PM.

Response: Panda admits that the correspondence in Appendix 15 contains the words quoted by Petra. Panda denies that RDM ever co-loaded with it. *See Sun Dec. at ¶ 23, p. 3.*

16. On April 3, 2008 Panda Global agreed via email that Panda Global and RDM Solutions should provide logistics services to Petra Pet on the following terms:

- Panda Global would ship the goods freight prepaid on a Master Bill of Lading ("MBL");
- The MBL's would be couriered to RDM Solutions weekly;
- Panda Global would provide credit for the freight until 15 days after the vessel arrived at the destination port; and
- Panda Global and RDM Solutions would have a profit sharing arrangement of \$150 per container.

Neither Panda Global nor RDM Solutions copied Petra Pet on correspondence concerning the proposed profit sharing arrangement. Document provided by Respondent: PANDA000020, Email of April 3, 2008.

Response: Admit.

17. From December 10, 2008 through December 15, 2008 RDM Solutions and Panda Global exchanged emails concerning RDM Solutions' overdue and late payments to Panda Global. Petra Pet was not copied on any of those emails. Documents provided by Respondent: PANDA000035 - 000038, Emails of December 10, 2008, 9:47 PM; December 12, 2008, 9:03 PM; December 15, 2008, 7:03 PM.

Response: Admit.

18. On December 17, 2008 Panda Global notified RDM Solutions that RDM Solutions had accumulated a "huge overdue payment;" indicated that failing to clear up these payments quickly would "cost more times for releasing cargo at your side" and advised RDM Solutions to "follow our agreement strictly." Petra Pet was not copied on this correspondence. Document provided by Respondent: PANDA000034.

Response: Admit.

19. Despite RDM Solution's financial difficulties, Panda Global and RDM Solutions continued to do business with Panda Global (Panda Int'l Transportation Co., Ltd.; Panda Logistics Co., Ltd.; or Panda Logistics Limited) issuing bills of lading identifying Petra Pet as the consignee; identifying RDM Solutions in the section on the bills of lading for freight; and identifying Petra Pet's customs broker, Kuehne + Nagel, as the "Notify" party. Representative documents provided in Complainant's Verified Complaint, Exhibit 1.

Response: Panda admits that its Bills of Lading identify Petra as the consignee, Kuehne +Nagel as the notify party and list RDM under freight amount. There is no factual basis, however, for Petra's reference to RDM's financial difficulties and Panda therefore denies same. As noted above, Panda also objects to the reference on the page titled Exhibit 1, and the reference to "Bills of Lading nominating RDM as U.S. collection agent" as there is no factual or evidentiary basis for such an assertion.

20. Panda Global issued debit notes directly to RDM Solutions corresponding to Panda Global's bills of lading, which identified exact amounts for "ocean freight," "AMS Charges" (i.e., automated manifest systems charges), "Profit Share" and/or "Handling Charge." Representative documents provided by Respondent: PANDA000150-151; 0000130-133.

Response: Panda admits to the authenticity of its Bills of Lading and Debit Notes and admits that it was instructed to bill RDM for transportation services provided to Petra.

21. The Panda Global debit notes identifying freight charges, related charges, profit sharing fees and/or handling fees were only sent to RDM Solutions. See Tab 20 herein, PANDA000150, 000130-000133.

Response: Panda admits that it was instructed to bill RDM for transportation services provided to Petra and that it therefore did not normally bill Petra directly for transportation services provided. See Sun Dec. at ¶ 16, p. 2.

22. In accordance with Panda Global's bills of lading identifying RDM Solutions as the party for freight charges and RDM Solutions' Arrival Notices stating that Kuehne + Nagel should be billed for ocean freight, Kuehne + Nagel made the required ocean freight payments to RDM Solutions by check. Documents provided by Complainant: PETRA-05893; Verified Complaint, Exhibit 7.

Response: Panda objects to the first page of Petra Appendix 22 on the grounds that it constitutes inadmissible hearsay. Panda also objects to the conclusion that Panda Global's bills of lading identified RDM as "the party for freight charges." Panda admits that it was instructed to bill RDM for transportation services provided to Petra. Panda also objects to any assertion that Kuehne + Nagel made required ocean freight payments to RDM as it is based on inadmissible hearsay and lacks any evidentiary foundation.

23. RDM Solutions billed Petra Pet directly for logistics and freight forwarding services other than ocean freight (for example, trucking, demurrage, lab tests, etc.) and Petra Pet paid RDM Solutions directly by check for those services. Representative documents provided by Complainant: PETRA-10189-10194.

Response: Panda admits that in October of 2010 Petra paid RDM for transportation services provided to Petra by Panda in the amount of \$2,348. Panda objects to the admissibility of any other documents not contained in the Appendix or on any

conclusion that might be drawn from documents referred to but not introduced as evidence.

24. Neither the RDM Solutions Arrival Notices billed to Kuehne + Nagel with ocean freight amounts nor the RDM Solutions invoices to Petra Pet for additional freight forwarding and logistics services identified amounts for profit sharing, handling fees or other profits that RDM Solutions earned on Petra Pet shipments. See Arrival Notices in Tab 13 (PETRA-04206, 02609) and RDM Solutions invoice in Tab 23 (Petra-10190).

Response: Panda denies proposed Finding of Fact 24 on the grounds that it is predicated upon inadmissible hearsay.

25. In preparation for a trip to China in April 2009 by Steven Mendal, an owner of Petra Pet, to meet with personnel from Panda Global, Mario Ruiz sent Mr. Mendal an email stating "I have spoken to panda in china last night they have your cell phone number and will be in contact with you asap. The people that will meet you will be: Betty Sun, she is the office manager of the Shanghai office. She was station in Beijing before and has been with RDM since the beginning. She is fully aware of the on goings of your business." Documents provided by Respondent: PANDA000088-000089.

Response: Admit.

26. Further to those anticipated discussions with Mr. Mendal, RDM Solutions emailed Panda Global stating "NO RATES TO HIM PLEASE!!!" Documents provided by Respondent: PANDA000090-000091.

Response: Admit.

27. Panda Global's payment difficulties with RDM Solutions continued and on June 30, 2009 Panda Global emailed RDM Solutions a list of invoices with the comment "Too many invoices are over-due long time. Below invoices need you to pay URGENTLY." Petra Pet was not copied on this correspondence. Document provided by Respondent: PANDA000003.

Response: Admit.

28. Panda Global's payment difficulties with RDM Solutions continued and on July 26, 2010 Panda Global sent Petra Pet an email concerning payments for freight charges commenting to Petra Pet "As you are our VIP client, we has agreed with RDM for payment term, which is different from the agreements with other clients." Document provided by Complainant: PETRA-05974-05975.

Response: Panda admits that the emails in Appendix 28 are authentic and contain the quoted language. It denies that Panda's payment difficulties were solely with RDM as

Petra was identified as the consignee on Panda's bills of lading and accordingly was obligated to pay for the services rendered by Panda. See Panda Terms and Conditions, Panda Appendix 2, pp. 6 – 16.

29. Due to the worsening financial situation between RDM Solutions and Panda Global, Panda Global sent Mario Ruiz emails on November 9, 2010, November 15, 2010, November 19, 2010, November 22, 2010 and November 29, 2010 noting accrual of overdue amounts eventually totaling \$110,630.03 and requesting urgent payment. Petra pet was not copied on this correspondence. Documents provided by Respondent: PANDA000024-000026.

Response: Panda admits that the email exchanges occurred. Panda denies that the worsening financial situation was solely between RDM Solutions and Panda Global as the money owed was for services rendered by Panda on behalf of Petra.

30. Petrapport notified RDM Solutions (Mario Ruiz) on November 24, 2010 that certain freight from China had not been released and that Petrapport was facing a possible loss of customers due to the delay. Verified Complaint, Exhibit 2.

Response: Admit.

31. On November 30, 2010 Panda Global acknowledged to Petra Pet that its accountant was holding the original bills of lading covering Petra Pet shipments due to Panda Global's financial difficulties with RDM Solutions. Document provided by Complainant: PETRA-05930.

Response: Panda admits that the email was sent from Betty Sun to Patty DeAvila at Petra. Panda denies that the cause of the problem was solely due to Panda Global's financial difficulties with RDM, as the money was owed by Petra for services rendered on its behalf by Panda.

32. In response Petra Pet stated to Panda Global on December 1, 2010 that "All freight for those containers are been paid by our broker to him." ("Him" in this email refers to Mario Ruiz.) Petra Pet further noted to Panda Global "I am very surprised you did not advice us on this problem, now it comes to the point that we have been hurt...." Verified Complaint, Exhibit 3.

Response: Panda admits that the email was sent from Patty De Avila to Betty Sun but denies the facts purportedly set forth therein because they constitute inadmissible

hearsay and lack any independent indicia of reliability. Panda also denies that Petra had not been informed of the ongoing failure to make payments. See Petra Appendix 28.

33. On December 3, 2010 Panda Global sent an email to RDM stating "RDM owes Panda Global totally USD129,686.93;" providing RDM a Statement Of Accounts ("SOA") detailing those charges and asking RDM "[w]hen will you pay all the overdue invoices to us?" Verified Complaint, Exhibit 5.

Response: Admit.

34. On December 13, 2010 Panda Global stated to Petra Pet that Panda Global never received payments from RDM Solutions totaling \$173,593.56 (\$144,455.53 + \$29,142.30) for freight amounts owing and claiming that the total amount owing Panda Global was \$250,330.03. Tab 22 (Verified Complaint, Exhibit 7).

Response: Panda admits the Proposed Finding of Fact 34 but moves to strike Petra's portion of the email attached at Appendix 34 on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of credibility.

35. In response to Panda Global's claims, Petra Pet responded that Petra Pet had already paid RDM Solutions for a certain amount of the freight charges claimed; that Petra Pet had cashed checks to prove payment; and that Panda Global's payment difficulties with RDM Solutions had nothing to do with Petra Pet. See Tab 22 (Verified Complaint, Exhibit 7).

Response: Panda admits that Petra made the representations set forth in Proposed Finding of Fact 35 by email but objects to its admissibility on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of credibility.

36. As a result of Mario Ruiz's failure to pay certain freight charges owing to Panda Global, Panda Global refused to provide Petra Pet with documents for goods that had arrived at the port and suggested that Petrapport should make a partial payment to Panda Global of \$100,000 within 3 days in order to obtain possession of that cargo. December 17, 2010 email from Panda Global General Manager provided by Complainant: PETRA-05939-05940.

Response: Panda admits that the email at Appendix 36 was sent to Petra and that Panda refused to release original bills of lading until it was paid for transportation services it had provided on behalf of Petra. Panda denies that the payments were solely owed by Mr. Ruiz.

37. In that email Panda Global's General Manager (Frank Guo) also stated in to Petrapport "we all know you are victim, you are innocent. You have no fault." Documents provided by Complainant: See Tab 36 (PETRA-05939-05940).

Response: Panda admits that the email contains that statement, along with the statement that "I am also a victim."

38. Petra Pet consulted its customs broker, Kuehne + Nagel, as to how to handle the situation with Panda Global and in response Kuehne + Nagle stated "First, RDM was contracted by Panda as their agent, therefore, if you Have paid RDM and can prove it (we will provide cashed checks) then Panda needs to go after RDM not Petra." See Tab 22 (Document provided by Complainant: PETRA-05893).

Response: Panda denies Proposed Request for Admission No. 38 on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of reliability.

39. On December 21, 2010 Petrapport sent Panda Global a formal proposal to settle the dispute including an agreement to be responsible for freight charges covering all goods actually shipped wherein the freight charges had not yet been paid, an amount totaling \$66,156.80. Document provided by Complainant: PETRA-05967-05968.

Response: Panda admits that it received the document attached at Appendix 39 but objects to its admissibility on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of reliability.

40. In response, Panda Global's General Manager was optimistic they could resolve the issues, but then raised numerous ancillary questions such that the anticipated agreement and payment of \$66,156.80 was never concluded. Document provided by Complainant: PETRA-04543-04545.

Response: Panda admits that its General Manager sent the email at Appendix 40. Panda objects to Petra's characterization of the email. Panda objects to the admission of the remainder of Appendix 40 on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of reliability. Panda further objects to the admissibility of the documents in Appendix 40 on the grounds that they constitute compromise offers and negotiations which are inadmissible pursuant to Fed. R. Evidence 408.

41. Petrapport, through counsel in China, also contacted Panda Global, but without result. Document provided by Complainant: PETRA-04518.

Response: Panda objects to the admissibility of the documents in Appendix 41 on the grounds that it constitutes compromise offers and negotiations which are inadmissible pursuant to Fed. R. Evidence 408.

42. On January 4, 2010 Panda Global issued a Statement of Accounts to Petrapport identifying 17 bills of lading covering 24 containers that would be released in exchange for \$91,744.80. Verified Complaint, Exhibit 9.

Response: Panda objects to the admissibility of the documents in Appendix 42 on the grounds that they constitute inadmissible hearsay and lack any independent indicia of reliability.

43. Since Petrapport's cargo at the U.S. ports was accruing storage and demurrage and Petrapport was not able to make certain deliveries due to inventory shortages, Petrapport paid Panda Global the \$91,744.80 demanded through Petrapport's vendor in China (Tianjin Everfun Pet Product Co.) ("Everfun") serving as Petrapport's agent. Due to exchange rates, Petrapport wired \$94,381.93 to Everfun to cover the freight payments in question. See Tab 42 (Verified Complaint, Exhibit 9).

Response: Panda admits that Petra paid the amount set forth in Proposed Finding of Fact 43. Panda denies the remainder of the Proposed Finding of Fact and objects to it on the grounds that no evidentiary basis has been established for the statements contained therein.

44. Petrapport's customs broker had previously paid for the three shipments in Panda Global's Statement of Accounts with the reference "Hanjin need only confirm" the freight amounts owing (total \$963.80) and as such, requested only warehousing and demurrage charges in order to release those goods. Document provided by Complainant: PETRA-04629.

Response: Panda objects to the admission of the document in Appendix 44 on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of reliability. Panda also objects to the proposed Finding of Fact on the grounds that it lacks any evidentiary basis.

45. Due to the delays caused by Panda Global's failure to provide documents, Petrapport was required to pay an additional \$29,784 to the U.S. ports in demurrage charges. See schedule prepared by the ocean carrier (Hanjin Shipping Co. Ltd.) ("Hanjin") detailing demurrage charges. Verified Complaint, Exhibit 10.

Response: Panda denies Proposed Finding of Fact 45 and objects to it on the grounds that no evidentiary basis has been established for the statements contained therein.

46. After paying Panda Global \$91,744.80 in January 2011, Petrapport believed that it had paid Panda Global for all but seven containers believed to be on the water since the four bills of lading for those containers were dated December 18, 2010. Verified Complaint Exhibit 11.

Response: Panda admits that the documents in Appendix 46 constitute its bill of lading. Panda denies Proposed Finding of Fact 46 and objects to it on the grounds that no evidentiary basis has been established for the statements contained therein.

47. Petrapport followed up on the arrival of those containers and subsequently learned on that while the containers had in fact shipped from China to the U.S. via Pusan, Korea, Panda Global stopped the containers in Korea and had those containers returned to China. Document provided by Respondent: Panda000048, Email February 22, 2008.

Response: Panda denies Proposed Finding of Fact 47 and objects to it on the grounds that the documents in Appendix 47 constitutes inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact.

48. Since Petrapport had paid the manufacturers in China approximately \$519,000 for the goods covered under the seven containers diverted back to China, those containers had substantial worth to Petrapport. Verified Complaint, P. 8.

Response: Panda denies Proposed Finding of Fact 48 and objects to it on the grounds that the document in Appendix 48 constitutes inadmissible hearsay and lacks any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact.

49. Hanjin confirmed that the freight charges associated with the seven containers amounted to \$23,400. Verified Complaint, Exhibit 12.

Response: Panda denies Proposed Finding of Fact 49 and objects to it on the grounds that the document in Appendix 49 constitutes inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact.

50. In March 2011 Panda Global demanded RMB 1006680.84 to re-export the seven diverted containers to the United States and Petra Pet agreed to that amount paying the additional RMB 1,006,680.84 (USD 153,926.73) demanded. Document provided by Respondent: Panda000001-000002; Verified Complaint, Exhibit 13.

Response: Panda admits that the Letter of Guaranty in Appendix 50 is authentic. Panda denies Proposed Finding of Fact 50 and objects to it on the grounds that the other documents in Appendix 50 constitute inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact

51. Since Panda Global refused to permit those seven containers to ship until Petrapport paid an additional \$153,926.73, Panda Global forced Petrapport to pay an additional \$130,526.73 ($\$153,926.73 - \$23,400 = \$130,526.73$) to receive those seven containers. See Tab 49 (Verified Complaint, Exhibit 12) substantiating the \$23,400 and Tab 50 (Panda 000001-000002; Verified Complaint Exhibit 13) substantiating the \$153.926.73.

Response: Panda admits that the Letter of Guaranty in Appendix 51 is authentic. Panda denies Proposed Finding of Fact 51 and objects to it on the grounds that the other documents in Appendix 51 constitute inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact

52. In addition to the amount paid to Panda Global, Petrapport was required to pay an additional \$27,932.65 to the Chinese authorities via Hanjin for demurrage and storage costs. Verified Complaint, Exhibit 14.

Response: Panda denies Proposed Finding of Fact 52 and objects to it on the grounds that the document in Appendix 52 constitutes inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact.

53. Panda Global also required Petrapport to pay an additional \$6,170 to Panda Global to cover miscellaneous charges on the seven containers diverted back to China. Verified Complaint, Exhibit 15.

Response: Admit.

54. On May 20, 2011 Panda Global sent Petrapport a debit note for additional miscellaneous fees in the amount of \$12,600. Document provided by Complainant: PETRA-05956.

Response: Admit.

55. Petra Pet questioned those charges and in response Panda Global threatened to return the containers to China again stating "If you want, I can move the containers back to Shanghai port tomorrow. Then you ask K/N or any other big famous forwarder to arrange the movement for you again. Tell me your decision today." Documents provided by Complainant: PETRA-05954-05955, Email May 21, 2011 3:38 AM; May 26, 2011 8:13 AM.

Response: Panda admits that it sent or received the emails referenced in Appendix 55. Panda objects to the admission of the statements contained in the emails from Petra on the grounds that they constitute inadmissible hearsay and lack any independent indicia of reliability.

56. In response to Panda Global's threat, Petrapport stated that "The wire transfer will be sent tomorrow." See Tab 54 (Document provided by Complainant: PETRA-05954, email May 26, 2011 1:54 PM).

Response: Panda objects to Petra's characterization of Panda having made a threat as it lacks any evidentiary foundation. Panda admits that the quoted language is accurate.

57. Petrapport's final seven containers were loaded on board a vessel in China in May of 2011 and were delivered to Petrapport in the U.S. in June 2011. Email of May 23, 2011 from Panda Global. Not numbered. See also Verified Complaint, P. 9, par. 32.

Response: Panda denies Proposed Finding of Fact 57 and objects to it on the grounds that the document in Appendix 57 constitutes inadmissible hearsay and lack any independent indicia of reliability and that no evidentiary basis has been established for the statements contained in the Proposed Finding of Fact.

58. In response to Petra Pet's complaint filed with the Federal Maritime Commission, Panda claimed that RDM Solutions was Petra Pet's agent and that as such, Petra Pet was directly liable to Panda Global for all freight amounts that RDM Solutions failed to remit to Panda Global. Document provided by Complainant: PETRA-04531-04532; Letter from Panda Global's counsel in China, Document provided by Respondent: PANDA 000044-000046.

Response: Panda admits that its response to Petra's Complaint asserted that RDM acted as Petra's agent. Panda objects to the admission of the remainder of Appendix 58 on the grounds that it constitutes inadmissible hearsay and lacks any independent indicia of reliability. Panda further objects to the admissibility of the documents in Appendix 58 on the grounds that they constitute compromise offers and negotiations which are inadmissible pursuant to Fed. R. Evidence 408.

59. Petra Pet has sustained the following expenses and injuries as a result of Panda Global's actions involving Petra Pet shipments:

- | | | |
|----|--|--------------|
| a. | Amounts attributable to double freight payments in first wire transfer :
See Tab 43 and Tab 44 herein. | \$963.80 |
| b. | Demurrage paid in the United States as a result of Panda Global's failure to provide freight releases:
See Tab 45 herein. | \$29,784 |
| c. | Amounts coerced through second wire transfer covering containers diverted back to China:
See Tab 49 and Tab 50 herein. | \$130,526.73 |
| d. | Demurrage and storage costs paid to Chinese authorities with respect to containers diverted back to China:
See Tab 52 herein. | \$27,932.65 |
| e. | First miscellaneous payment to Panda Global with respect to containers diverted back to China: | \$6,170 |

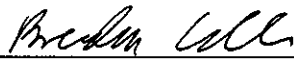
See Tab 53 herein.

- f. Second miscellaneous payment to Panda Global with respect
to containers diverted back to China: \$12,600
See Tab 54 and Tab 55 herein

Total damages claimed: \$207,977.18.

Response: Panda denies that Petra suffered any damages as a result of Panda's action. It further objects that the Proposed Findings of Fact lack any evidentiary support or basis.

Respectfully submitted,



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***PANDA LOGISTICS LIMITED; PANDA
LOGISTICS CO., LTD. (f/k/a PANDA
INT'L TRANSPORTATION CO., LTD.)***

DATE: July 11, 2012

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by overnight delivery and/or via email transmission, this 11th day of July 2012:

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